IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1113 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVARSINGH SHOBHAGSINGH RAJPUT - Petitioner(s)
Versus
PRASHANTBHAI NANASAHEB IGALE & 7 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner(s) : 1,
MR SHAKEEL A QURESHI for Respondent(s) : 1 - 5.
Ms MAITHILI METHA ASST GOVERNMENT PLEADER for Respondent(s) : 6,
NOTICE NOT RECD BACK for Respondent(s) : 6 - 7.
NOTICE SERVED for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/04/2006

ORAL JUDGMENT

1. Rule. Shri Sakil Qureshi, learned advocate waives service of rule on behalf of the

respondent Nos.1 to 5 and Ms.Maithili Mehta, learned AGP waives service of rule on behalf of the respondents Nos.6 to 8. Heard the learned advocates for the parties and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat dated 24.8.2005 passed in Revision Application No.85 of 2003 in dismissing the said revision application and confirming the order passed by the Collector, Surat dated 28.2.2003 passed in CTS Appeal No.51 of 2003 in canceling the Entry No.6044 which was made in favour of the petitioner.

3. It appears from the record that the

petitioner had purchased the land in question by registered sale deed dated 30.7.1991 and that necessary entry to that effect came to be recorded and / or mutated in the City Survey record and name of the petitioner was entered into the City Survey record. It appears that the original owner challenged the said entry before the Deputy Collector, Choryashi Prant, Surat and the Deputy Collector, Choryashi Prant, Surat by its order dated 16.5.2000 pased in CTS / Appeal No.62 / 96 linked with Appeal No.48 / 98 ordered to remove the name of the petitioner from the city survey record. Feeling aggrieved and dissatisfied with the same, the petitioner preferred CTS Appeal No.51 of 2001 before the Collector, Surat and the Collector, Surat by its order dated 28.2.2003 dismissed the said appeal. Feeling aggrieved and dissatisfied with the same, the petitioner preferred Revision Application NO.85 of 2003 before the Principal Secretary, Revenue Department (Appeals) under Rule-108 (6)

(a) of the Bombay Land Revenue Rules and considering the fact that the Civil Suits being Regular Civil Suit No.684 of 1991 and Regular Civil Suit No.78 of 1991 at the instance of the original landlords are pending and one another Special Civil Suit No.222 of 2004 is filed by the petitioner which is pending before the Civil Court, Surat, the Principal Secretary, Revenue Department (Appeals) by impugned order dated 24.8.2005 while dismissing the said revision application has observed that necessary entry will be made on the basis of the judgment and decree that may be passed in the aforesaid Civil Suits. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri Nimish Kapadia, learned advocate appearing on behalf of the petitioner has submitted that the petitioner has purchased the

property in question by registered sale deed and necessary entry is required to be made in the revenue record / city survey record and if there is any dispute and/or Civil Suit is pending between the same parties, an entry can be made subject to ultimate outcome of the Civil Suit pending between the parties. Shri Kapadia, learned advocate for the petitioner has relied upon the decisions of this Court in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND ORS. 2005 (2) GLR 1370 and another decision in case of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS reported in 2005 (3) GLH 657 in support of his above submission and therefore, it is requested to allow the present special civil application and / or modify the order passed by the Principal Secretary, Revenue Department (Appeals) accordingly.

5. Shri Sakil Qureshi, learned advocate

appearing on behalf of the private respondents while supporting the judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat has submitted that as there are civil suits pending between the parties, the Principal Secretary, Revenue Department (Appeals), State of Gujarat has rightly passed the order to the effect that on conclusion of the Civil Suits, necessary entry can be made in the revenue record and/or city survey record and therefore, the impugned may not be interfered with by this Court in exercise of the powers conferred under Article 226 and 227 of the Constitution of India.

6. Ms.Maithili Mehta, learned advocate for the respondent – Authority has requested to pass appropriate order.

7. Heard learned advocates appearing on behalf of the parties.

8. It is not in dispute that the petitioner has purchased the property in question by registered sale deed on payment of consideration. Under the circumstances and unless and until the said sale is declared as invalid or set aside, necessary entry is required to be made in the revenue record / city survey record giving effect to the registered sale deed. It is also equally true that there are Civil Suits are pending between the parties. However, considering the decision of this Court in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND ORS. and JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS (Supra), over and above the said entry which is made pursuant to the registered sale deed, an additional entry can be made as regards the aforesaid Civil Suits pending between the parties.

9. Under the circumstances, the judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat dated 24.8.2005 passed in Revision Application No.85 of 2003 is modified to an extent that an entry in favour of the petitioner is restored and the respondents authorities are directed to make an entry in the city survey record in favour of the petitioner on the basis of the registered sale deed. However, an additional entry shall also be made to the effect that the aforesaid entry in favour of the petitioner would be subject to ultimate outcome of civil suits pending between the parties i.e. Regular Civil Suit No.684 of 1991 and Regular Civil Suit No.78 of 1991 at the instance of the original landlords are pending and one another Special Civil Suit No.222 of 2004.

10. Rule is made absolute to the aforesaid extent, however, there shall be no order as to

costs.

Direct Service is permitted.

[M.R.Shah, J.]

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